



Ahtna Tene Nene' Comments for Proposals Submitted for the March 18-21 Board of Game Special Meeting on Copper Basin Area Moose and Caribou Hunting

PROPOSAL 1 - 5 AAC 99.025. Customary and traditional uses of game populations. Modify the amount reasonably necessary for subsistence for moose.

Ahtna Tene Nene' submitted proposal 1 and asks the BOG to adopt its provision to establish an ANS of 200 moose for the area described in 5 AAC 92.074(d) that is specifically directed for the eight communities that established the CSH, and which includes a specific finding that the ANS includes 100 any bull moose.

Attached to and incorporated in these comments are a paper from Bill Simeone demonstrating the lack of reasonable opportunity under the current moose hunting regulations for GMU 13 and a summary legal analysis supporting the need for a Tier II any bull moose hunt for those communities enrolled in the CSH if the Board chooses to continue to allow any group of 25 to participate in the hunt. A Transcript of the BOG's March 2009 deliberations on ANS and the 100 any bull quota for the CSH is also attached. Reviewing these documents first will help with understanding the comments below.

Amend 99.025 (a)(8) – Amount necessary for subsistence for moose by adding a new section as follows:

(8) Moose

Parts of units 11, 12, 13 described in 5 AAC 92.074(d) and for the households from the communities of Gulkana, Cantwell, Chistochina, Gakona, Mentasta, Tazlina, Chitina, and Kluti Kaah that are participating in the community subsistence hunt established for that area; positive; 200 moose including 100 bull moose that do not meet antler size restrictions for other resident hunts in the area.

The current ANS for moose in the community subsistence hunt area described in 5 AAC 92.074(d) is a part of the total ANS for GMUs 11, 12 13. The ANS for moose for GMU 11 is 30-40, the ANS for GMU 12 is 60-70, and the ANS for GMU 13 is 300-600. The board clearly has the authority to establish a separate ANS for the CSH area that encompasses parts of these three GMUs. For example, see the moose ANS established for the Lime Village Management Area in GMU 19.

There is no specific ANS for the any bull moose population in the current moose ANS for GMUs 11, 12 or 13. The board clearly has the authority to identify the any bull moose population as a “portion” of a population customarily and traditionally taken and used for subsistence.

AS 16.05.258(a) – the Board of Game shall identify the game populations, “*or portions* of stocks or populations, that are customarily and traditionally taken or used for subsistence.”

From *Native Village of Elim v. State*, 990 P.2d 1, 11 (Alaska 1999), “We give the Board's identification of fish stocks under the subsistence law considerable deference for two reasons. First, identifying a "fish stock" requires fisheries knowledge and experience and thus falls within the Board's expertise. Second,



the subsistence law defines "fish stocks" broadly, allowing the Board to identify any category of fish "manageable as a unit" as a "stock."

The board's practice over several decades has been to manage the any bull population in GMU 13 as a separate portion of the moose population, first through a Tier II hunt in the 1990s and then through the 100 any bull quota for the CSH beginning in 2009. Establishing and ANS for any bull in the CSH area will formalize this ongoing determination in regulation.

If the board fails to adopt the changes to 5 AAC 92.072 included in proposal 44 submitted by Ahtna Tene Nene', and continues to allow any group of 25 or more persons to participate in the CSH authorized by 5 AAC 92.074(d), it must adopt an ANS for the CSH that reflects the amount of moose necessary for all of the households the BOG and ADF&G authorize to participate in the moose hunt. The total ANS for moose, even under this scenario, must include a specific ANS for bull moose that do not meet antler size restrictions for other resident hunts in the area since the BOG has already determined that an opportunity to harvest any bull moose is necessary to meet the subsistence needs and provide a reasonable opportunity for of the eight villages that established the hunt.

If the BOG fails to reduce the number of groups participating in the CSH for the area described in 5 AAC 92.074(d), the ANS for any bull moose will exceed the harvestable amount unless the Board somehow reaches the conclusion that the current quota of 100 provides a reasonable opportunity all of the households currently allowed to participate. No data we are aware of would support this conclusion. If the ANS exceeds the harvestable surplus of any bulls, the Board is required to establish a Tier II hunt. Tier II applicants would be limited to only those households that are eligible for the CSH moose hunt authorized for the area described in 92.074(d) since the ANS is specific to this hunt and this subsistence use pattern.

If the board eliminates the CSH, it must enact new regulations that provide a reasonable opportunity for the subsistence needs of these eight communities and the other households genuinely engaged in subsistence uses for the area. If the Board continues to regulate in a way that all Alaska residents are subsistence users regardless of their pattern of use, the ANS will need to be significantly increased, and will likely be the entire harvest amount. The moose hunt for GMU 13 will consequently be a Tier II hunt.

The board can avoid many of these consequences, and serve the needs of all hunters, subsistence, personal use and even non-resident, if it reforms the CSH as proposed in revised 44 – see comments below – and establishes a subsistence moose hunt for GMU 13 households that are not a part of the CSH that requires a household to demonstrate that it is genuinely engaged in subsistence hunting.

PROPOSALS 2 through 13, 15-16, 18, 23 and 25. All of these proposals eliminate or significantly restrict the community subsistence harvest hunt for moose.

Ahtna Tene Nene' opposes all of these proposals to eliminate or restrict the community subsistence moose hunt. The CSH for the area described in 5 AAC 92.074(d), and as originally implemented for the eight communities that established the hunt, is essential to provide for these communities'



economic, nutritional, cultural and traditional existence. Board Findings 2006-170, and the administrative record for the board's actions establishing this community hunt, fully support the necessity of retaining the subsistence opportunity afforded by the CSH. Other previous attempts by the Board to provide for the subsistence uses of these communities have been a failure. In 2009, the first and only year that the CSH was administered consistent with the Board's intent, was the only time in decades that these communities were able to approach a moose harvest that met their subsistence needs.

The solution is not to sacrifice providing subsistence opportunity and the priority through the CSH for registration hunts, expanded general hunts, etc. The solution is to do the hard but necessary, and we believe legally mandated work, of defining which communities are eligible to participate in the CSH because they have established and continue to engage in a pattern of community subsistence use in the area described in 5 AAC 92.074(d). The eight communities that established this CSH went through years of effort to demonstrate this pattern of use, including the need for an extended season and the need for an any bull moose quota. This effort is reflected in BOG Findings 2006-170. The Board made the decision to establish the CSH based on the efforts of these communities. Ahtna simply asks the board to employ the same process for each group that wants to join the hunt in the area described in 5 AAC 92.074(d).

There is nothing illegal or unconstitutional about treating all interested communities the same – requiring them to demonstrate that they are engaged in the subsistence pattern of use before they are entitled to participate in this hunt.

PROPOSAL 14 - 5 AAC 85.045. Hunting seasons and bag limits for moose. Eliminate the community subsistence harvest hunt and the December registration moose hunt, and modify the number of available drawing permits.

Ahtna Tene Nene' opposes Proposal 14 to change a subsistence hunt to a registration hunt and to modify drawing permits to 100 permits. A drawing permit hunt is not a subsistence hunt. The proposed hunt will not provide a reasonable opportunity or a subsistence priority for moose and caribou as required by the law and by sound policy.

The proposed registration hunt is also impractical for many who need the meat most. Many local subsistence users do not have ready access to apply online. If the registration permit is first come first served basis, this kind of lottery or artificial ordering has nothing to do with providing for subsistence uses for those who need it most. The law requires a reasonable opportunity or Tier II. A registration hunt achieves neither. The solution for the CSH is not another gimmick to try and avoid implementing the subsistence priority. The solution is to use the Board's statutory authority and regulations to clearly identify those individuals and communities that are genuinely engaged in a subsistence pattern of use and institute a process that restricts subsistence hunting to those who are qualified.

This proposal also contains several misstatements of law and fact.

- First, it is illegal under the *McDowell* line of precedent for the Board to make a determination on the basis of what opportunity a rural resident may have under federal management and



ANILCA. As a matter of fact, many members of the eight communities that established the CSH are not rural residents. They do not reside in the communities. Some, for example reside in Anchorage, Eagle River and other locations. Yet they remain connected to the land, the people, the resources and the culture of the named communities. They participate in many of the traditional gatherings such as the numerous potlatches. They follow customs such as distributing a youth's first successful hunt throughout the community. They share broadly. They concentrate their hunting, fishing and gathering in the area described in 5 AAC 92.074 (d). They are therefore members of the "community" and their participation in the CSH is consistent with the Board's original intent. Their pattern of use is consistent with BOG Findings 2006-170. They are not, however, as urban residents, eligible for the ANILCA "rural" priority and they do not have access to subsistence hunting on federal lands.

- Second, many of the 1.3 million acres of Ahtna lands are not in GMU 13. Instead they are in remote areas of GMU 11, locked as in-holdings in the WRST National Park.
- Third, the State currently claims jurisdiction to manage the moose hunt on Ahtna ANCSA lands and the Native Allotments of Ahtna tribal members. Under the premise of State jurisdiction, Ahtna must abide by the same bag limits and seasons as the Board places for all State lands in the GMU. Therefore, when the any bull quota closes for a sub-unit, the ANCSA lands and allotments are also closed within that area. The proposals' claims about the value of hunting on posted private lands are overblown.
- Fourth, the Board's determination about non-resident moose hunts has little or nothing to do with whether reasonable opportunity is being provided for subsistence uses. The Board can make an ANS determination that includes managing the any bull part of the population as a separate population in order to provide for subsistence uses. Likewise, the Board can manage a remote population of large bull moose in GMU 13 as a distinct population for a non-resident trophy hunt so long as doing so is not impacting subsistence uses.
- Fifth, the proposers seem to ignore that the law requires that a reasonable opportunity and priority be provided for subsistence uses. One does not get to "simply conclude" that subsistence needs are being met because of the availability of a non-resident hunt. The facts, such as the success rate for subsistence moose hunting in GMU 13, clearly demonstrate that the current regulations do not provide a reasonable opportunity. The proposed drawing hunts would make that violation of law and policy worse, not better.

PROPOSALS 17 and 19 - 5 AAC 85.045. Hunting seasons and bag limits for moose. Limit the season dates for the community subsistence harvest moose hunt.

Ahtna Tene Nene' opposes Proposals 17 and 19, however, these proposals help make the point that abuse is prevalent under the current CSH process. This rationale supports Ahtna Tene Nene's proposals to reform the CSH.

Moreover, these proposals have things exactly backwards. Number 17 wants to eliminate subsistence hunting during the "sport" hunt and give the CSH 5 days by emergency order in November when conditions fall apart and the moose may still be colored by the rutting season or when it may be minus 40-degree weather, making it difficult and dangerous to hunt. Number 19 wants to limit the subsistence moose hunt to August 10-25 when, given global warming, the



moose may not be moving. The law requires a reasonable opportunity, and neither of these even begins to consider this factor. The law requires that other consumptive uses, like the “sport” season be restricted or eliminated when necessary to provide a reasonable opportunity for subsistence. These proposals stand this requirement on its head.

The facts are that a reasonable opportunity is not being provided. The eight communities that originally established the CSH only harvested 16 moose during the 2016 season that lasted from August 20 thru September 20. This is in stark contrast to 2009 when these same communities harvested nearly 100 moose during a season that lasted from August 10 through September 20. The season for the CSH needs to be expanded, not shortened, and the Board needs to consider restricting the moose hunting season for other consumptive uses in order to provide a reasonable opportunity for the hunters in the CSH and household subsistence hunt in GMU 13.

The Board should take the reasonable, and we think legally required step, of limiting those eligible to participate in the CSH and household subsistence seasons to households and communities genuinely engaged in a subsistence pattern of use. By doing so, an ANS could be established that accurately considers real subsistence uses rather than an ANS inflated by the thousands currently classified as subsistence hunters but who commonly come to the area for a week or less per year on a hunting trip. If the subsistence season is hunted only by those genuinely engaged in a subsistence way of life, the number of hunters will be much smaller, and any disruption to the general hunt will be minimized.

PROPOSALS 20 and 21- 5 AAC 85.045. Hunting seasons and bag limits for moose. Both Proposals would replace the community subsistence harvest hunt for moose with a Tier II moose hunt.

Proposal 21 suggests either a Tier II hunt for moose or a registration hunt. Ahtna Tene Nene’ opposes a registration hunt, see above, comments opposing proposal 14.

Ahtna Tene Nene’ only supports a Tier II hunt under the conditions described above in comments to proposal number 1. If the board rejects the Ahtna Tene Nene’ proposals to amend the CSH regulations, and continues to allow any group of 25 or more persons to participate in the CSH authorized by 5 AAC 92.074(d), it must adopt an ANS for the CSH that reflects the amount of moose necessary for all of the households participating in the CSH for moose. The total ANS for moose must include a specific ANS for bull moose that do not meet antler size restrictions for other resident hunts in the area since the BOG has already determined that 100 any bull moose are necessary just to meet the subsistence needs of the original eight villages.

If the BOG fails to reduce the number of groups participating in the CSH for the area described in 5 AAC 92.074(d), the ANS for any bull moose will exceed the harvestable amount. The board is required to establish a Tier II hunt under this situation. Tier II applicants would be limited to only those households that are eligible for the CSH moose hunt authorized for the area described in 92.074(d) since the ANS is specific to the CSH.



Ahtna Tene Nene agrees that if a Tier II hunt is required there should be only one Tier II permit for a household that is enrolled in the CSH.

The CSH moose season should be from August 20-September 25, and if there is a Tier II hunt for the CSH, the season should also be from August 20-September 25.

We agree with the aspect of proposal 20 that is consistent with proposal 32 submitted by Ahtna Tene Nene'. Proposal 20 suggests that in addition to a Tier II any bull hunt, only "qualified applicants" should be issued subsistence permits to hunt antler restricted moose during an extended fall season. In other words, only those households and communities that are engaged in a pattern of subsistence uses would hunt from August 20-September 25. All other hunters who are not engaged in subsistence uses would be limited to a season from September 1-20. The Board should use the eight criteria for establishing customary and traditional uses in 5 AAC 99.010 to create an application that demonstrates that the user is engaged in subsistence uses versus a sport, personal use or other consumptive use of moose. Only those that meet the criteria for engaging in a subsistence use as demonstrated by the application would receive a permit to hunt in the extended subsistence season.

PROPOSAL 22 - 5 AAC 85.045. Hunting seasons and bag limits for moose; and 92.050 Required permit hunt conditions and procedures. Eliminate the community subsistence harvest hunts for moose, and adopt a resident "any bull" registration hunt for residents.

This proposal suffers from several misstatements of fact and law. See above comments for proposal 14. Also:

- A registration hunt is not a subsistence opportunity. The restriction in the proposal of one any-bull moose every three years clearly demonstrates that this is a sport opportunity.
- Ahtna Tene Nene' is not aware of any "facts" that establish that the eight villages named in the proposal are being afforded a reasonable opportunity under current regulations. Eliminating the any bull opportunity through establishing a registration hunt will decrease the already deficient subsistence opportunity.
- The proposal uses the term "perpetual reasonable opportunity" in describing Ahtna Tene Nene's goal for subsistence regulations for the 8 named communities. Although the proposal infers otherwise, this is exactly what the State subsistence law requires.
- The proposal infers that the CSH as supported by Ahtna Tene Nene' is a "native priority". To the contrary, the hunt has consistently been administered to include members of the communities regardless of whether they are tribal members or not. Moreover, the Alaska Supreme Court has never held that the state constitution requires that the CSH for 5 AAC 92.074(d) must be open to all groups of 25 or more who apply. That condition was created by the Board and can be eliminated or modified by the Board.



PROPOSAL 24 - 5 AAC 85.045. Hunting seasons and bag limits for moose. Clarify which communities are eligible for the “100 any bull” quota and extend the CSH season to September 25.

This proposal was submitted by Ahtna Tene Nene’. When the board originally established the CSH for the eight communities, it also established a quota of 100 any bull moose for the CSH based on findings about the amount of moose these 8 communities needed to meet subsistence needs. The quota has remained 100 despite the huge increase in households and groups in the moose CSH.

The proposed amended regulation would clarify that the 100 any bull quota for the GMUs in the hunt area established in 92.074(d) is only for the eight communities that the Board has approved as eligible to participate in the CSH for the area.

The proposal also extends the CSH moose season 5 days, until September 25, in the CSH area and for the identified communities. The extended hunting season is necessary to provide the 8 villages with a reasonable opportunity.

This proposal follows from proposal one also submitted by Ahtna Tene Nene’s to amend the ANS findings for moose to include a specific ANS determination for the any bull moose population in the CSH area described in 5 AAC 92.074(d).

PROPOSALS 26, 27 and 28 - 5 AAC 85.045. Hunting seasons and bag limits for moose. These proposals ask to liberalize antler restrictions for the general season moose hunt in Unit 13.

Under these proposals, the general season hunt would have a more liberal bag limit than the Copper Basin Community Subsistence Hunt for moose (except for those CSH hunters with a locking tag for any bull moose during the short time that hunt is open before the quota is filled). Liberalizing the general hunt in this way without providing a more liberal bag limit for subsistence users would violate the State subsistence preference.

Impacts to the hunting areas will increase if the moose antler restrictions for the general season are changed as proposed. More hunters will be drawn to the area and more moose will be taken in the general hunt, lessening opportunity for a successful subsistence harvest.

Depending on what the Board does or does not do, the general season may need to be further restricted rather than liberalized in order to provide a reasonable opportunity for subsistence uses. If Board policy and regulations continue to allow all Alaska residents to be classified as subsistence users, and hunt under subsistence moose seasons and bag limits in GMU 11, 12 and 13, the moose hunts for these GMUs may all need to be managed as Tier II hunts. If all Alaskans are subsistence users of moose in these GMUs, the ANS needs to reflect that fact; the current ANS does not. Even if the ANS is the total allowable harvest, there is not a reasonable opportunity since harvest success rate is so low. If there is not a reasonable opportunity for all subsistence users, it is a Tier II situation.



PROPOSAL 29 - 5 AAC 85.045. Hunting seasons and bag limits for moose. Close the nonresident moose season in Unit 13.

We support Proposal 29 to close GMU 13 to Nonresident hunters. GMU 13 is severely impacted by the extraordinary hunting pressure, and eliminating the non-resident moose hunt may reduce some of this pressure. Less hunters in the field will allow more harvest of moose for other hunters.

If all Alaskan residents are subsistence users for moose in GMU 13, there is not a reasonable opportunity under current regulations. The non-resident draw hunt is not consistent with providing for subsistence uses under this policy.

If the Board were to use its authority, and clearly define a subsistence pattern of use, and institute a process for ensuring that subsistence permits only go to those who are engaged in that pattern of use, there would be a sensible way to provide for subsistence uses, a general hunt and perhaps a non-resident hunt. After the Board fully and justly provides for genuine subsistence uses, it has more discretion to allocate among the general and non-resident hunts.

PROPOSALS 30, 31, 34 and 35 - 5 AAC 85.025. Hunting seasons and bag limits for caribou. These proposals seek to eliminate or significantly restrict the community subsistence harvest hunt for caribou.

Ahtna Tene Nene' opposes these proposals on much the same grounds as cited above for its opposition to proposals 2 through 13, 15-16, 18, 23 and 25 which seek to end or severely restrict the CSH for moose.

The CSH for caribou needs to be reformed to achieve the intended result – to provide a reasonable opportunity to those communities genuinely engaged in a community pattern of subsistence uses as acknowledged in BOG Findings 2006-170. Doing this will help take care of the real problem for all hunters of the Nechina herd – crowded and dangerous hunting conditions.

Some of the above proposals request the elimination of the requirement that a household with a Tier I permit for caribou in GMU 13 may only hunt for moose in GMU 13. Ahtna supports repealing this restriction.

Proposal 34 requests shortening the draw hunt season to reduce overcrowding and competition with subsistence hunters. Ahtna Tene Nene' agrees with the intent of this part of the proposal. The Board must take actions to control overcrowding and competition with subsistence users. Significantly restricting hunting time for the draw hunt or eliminating it all together is one possibility. A reasonable opportunity for subsistence uses involves several factors, including the length of the season, the bag limit and overcrowding and competition. Subsistence hunters need a hunting opportunity that is separate and longer than the season for non-subsistence hunting.



PROPOSAL 32 – 5AAC 92.050. Required permit hunt conditions and procedures. Change the eligibility criteria for Tier I caribou and moose hunts in Unit 13.

Ahtna Tene Nene’ submitted this proposal. Very simply, the proposal would require an application for a Tier I household subsistence permit for both moose and caribou. The application would require verification that the household is engaged in a pattern of subsistence uses for the game populations.

Alaska provides a permanent fund dividend – money from the state treasury – a State resource, and in order to get the PFD a person must fill out an application that shows establishment of residency and presence in the state for a significant part of the year. Wildlife in GMU 13 is also a valuable resource, and the State subsistence law requires a preference for those engaged in subsistence uses. Requiring an application demonstrating that a person is an Alaska resident who has established a pattern of use of subsistence resources over a reasonable period of time for a wildlife resource is consistent with State law and policy. Requiring a person to show a pattern of subsistence uses over the past 12 months or more is no more burdensome than requiring a person to show residency for a year before getting the PFD. ADF&G can administer all fashions of applications for drawing hunts, registration hunts, etc. Any argument about an administrative burden, expense etc. for administering a Tier I hunt is merely a matter of choice of priorities.

Ahtna Tene Nene’ makes this proposal as a substitute for the current restriction that a household hunting Nelchina caribou must limit its moose hunting to GMU 13. This restriction was intended to reduce the number of hunters who would apply for a Tier I caribou permit. This has not occurred. The number of Tier I permits and caribou hunters has increased while the subsistence moose and caribou hunting opportunity has declined.

Merely linking moose and caribou hunting opportunity to GMU 13 failed to reduce hunting pressure. It also fails to define a subsistence use pattern that is consistent with the eight criteria. Successfully addressing subsistence and general hunting issues in GMU 13 requires a fundamental change – a commitment to fully implementing the subsistence law.

All the attempts to adjust the edges of subsistence hunting regulations in GMU 13 have made things worse for all hunters – prime examples being linking moose and caribou hunting in GMU 13 and the one any bull locking tag for every three households in the CSH. Both of these regulations have failed and need to be repealed. These kind of superficial fixes fail because the Board has not dealt with the most essential part of the State subsistence statute – defining what constitutes a subsistence pattern of hunting and instituting a process which assures that only those engaged in that pattern are hunting under subsistence regulations.

PROPOSAL 33 - 5 AAC 85.025. Hunting seasons and bag limits for caribou. Eliminate the caribou community subsistence harvest hunt, Tier I and drawing hunts, and the requirement to hunt moose in Unit 13; replace with a registration hunt period system.

Ahtna Tene Nene’ opposes Proposal 33. The premise of the proposal is faulty in regards to its impact on subsistence uses of Nelchina caribou. It states, “These registration hunts will provide



a reasonable opportunity for subsistence caribou hunting **for all Alaska Hunters.**” The proposal assumes that all Alaska residents are subsistence hunters. This is understandable given the way that the Board has regulated the Nelchina hunt over the past several years, issuing a Tier I permit to anyone regardless of their pattern of hunting and use so long as they agreed to hunt moose exclusively in GMU 13. However, all Alaska residents who hunt for caribou in GMU 13 are not engaged in a subsistence pattern of use and are therefore not subsistence users. If all Alaskans are subsistence users, the current ANS for the Nelchina hunt is not justifiable, and would necessarily need to be the full allowable harvest in most if not all years. The hunt would therefore need to be managed under Tier II.

The proposal maintains that the complex registration system, limited to a one week hunting period in the fall (unless there are remaining permits for another subsequent period) will provide a reasonable opportunity for subsistence uses. The proposal admits otherwise when it acknowledges that in some or many one-week periods “caribou are not easily accessible, but some are always available.” A one-week period in the fall, when a few caribou in some remote part of 13 may be available to those with the right kind of off-road transportation, is not a reasonable opportunity. Also, the proposal acknowledges that once the harvest goal for the herd is reached, the hunt would be emergency closed, possibly foreclosing hunts later the fall and completely eliminating the winter hunt. This further diminishes reasonable opportunity. The current 300 caribou quota under the CSH has, in most recent years, allowed the community subsistence hunt to continue through the winter season.

The proposal is also an example of how far regulation of the Nelchina hunt has strayed from the subsistence pattern of use. The proposal would eliminate any requirement that a subsistence user salvage what it calls the “unnecessary animal parts such as all fat”. For the Ahtna people, the fat is not “unnecessary”; it is a valuable subsistence resource. This is documented in the Board’s 2006 findings under C&T criteria 5 and 6. This proposal is not consistent with regulating subsistence uses.

PROPOSAL 36 - 5 AAC 85.025. Hunting seasons and bag limits for caribou. Increase the bag limit for the caribou community harvest hunt and clarify which communities are eligible to participate in the CSH and under the 300 caribou quota.

When the board originally established the caribou CSH for the eight communities listed in the regulation, it also established a quota of 300 caribou for the CSH based on findings about the amount of caribou and hunting opportunity those original 8 communities needed to meet subsistence needs. The quota has remained 300 despite the huge increase in households and groups in the caribou CSH. The board also changed the household bag limit for those participating in the CSH from two caribou per household to one caribou per household.

The proposal changes the bag limit back to two caribou per household. The increased CSH bag limit is necessary to provide for the extensive sharing and nutritional needs of the eight communities that originally established the CSH.

It also clarifies that the 300 caribou quota for the CSH applies only to those communities that the board has approved as eligible to participate in the CSH for the area described in 92.074(d). The



intent is that the Board will adopt the changes to 5 AAC 92.072 included in Ahtna generated proposal 44. The Board would agree to review a proposal by any community that wants to join the CSH for the area described in 92.074(d) to determine if the community has established a C&T pattern of community subsistence use for the area. If no other community makes a proposal to join that CSH, or if the Board determines that a community has failed to demonstrate eligibility, the 300 caribou quota would remain for the eight communities that the Board has already approved for the CSH. If the Board adds another community for the hunt area, it would need to determine if the 300 quota will satisfy the subsistence needs of all eligible communities, or whether the quota should be increased due to the increased number of eligible households.

The proposal also extends the CSH season 10 days, until September 30. This is necessary because of changing climate and caribou migration periods. The extended season will also provide 10 days of hunting when there is not the overcrowded hunting grounds that result in poor hunting success. This change in the CSH season is necessary to provide for reasonable opportunity.

PROPOSAL 37 - 5 AAC 85.025. Hunting seasons and bag limits for caribou. Lengthen the caribou season, increase winter caribou bag limit, and establish a youth hunting season.

This proposal raised many of the concerns for the Nelchina caribou hunt that have been raised by Ahtna Tene Nene' and many other hunters; overcrowding, safety, lack of opportunity for youth, low success rates – caused by having the general hunt, drawing hunt and subsistence hunts all happening during the same season. The rationale cited in this proposal supports Ahtna Tene Nene's position that the current hunting structure for Nelchina caribou does not provide a reasonable opportunity. Something should be done to make the hunt safe for families and youth. Some of the solutions in this proposal may work for a general or drawing hunt, but not for the CSH.

The subsistence hunt must be managed consistent with the subsistence laws. Eligibility for the Tier I and CSH subsistence hunts should be restricted to those genuinely engaged in subsistence uses. This will reduce the crowding and number of hunters because a significant number of households currently in the CSH and Tier I hunts are not genuinely engaged in subsistence uses. The bag limit for the CSH should be two caribou per household, and the board should consider increasing the bag limit for the Tier I household hunt. There should be periods before the general hunt opens, during the current general hunt season, and after the close of the general hunt season when the general hunt is closed and the subsistence season is open.

PROPOSALS 38, 39, 40, 41, 42 – 5 AAC 85.025. Hunting seasons and bag limits for caribou; 92.050. (a)(4)(I). Required permit hunt conditions and procedures. The proposals eliminate or restrict the drawing hunt for caribou in Unit 13 and remove the requirement that Unit 13 Tier I caribou hunters shall hunt moose in Unit 13.



Ahtna Tene Nene' supports eliminating the drawing hunt for caribou in Unit 13 and removing the requirement that Unit 13 Tier I caribou hunters shall hunt moose in GMU 13. Both measures will help reduce overcrowding, increase hunting safety and caribou hunting success and provide for better conservation and reasonable opportunity for subsistence moose hunting in GMU 13.

PROPOSAL 43 - 5 AAC 85.045. Hunting seasons and bag limits for moose.

This proposal points out the abuses occurring in the CSH and the impact these abuses are having on hunting opportunity in GMUs 11 and 13. The solution proposed, however, suffers from the same faults as proposal 38, see comments above.

The premise of this proposal is that all Alaska residents who hunt moose in GMUs 13 and 11 are subsistence users. The reasoning continues that if this is true, there is no difference between a general hunt for residents and a subsistence hunt, therefore the general hunt is all that is needed to provide for a subsistence preference and reasonable opportunity. The Alaska Superior Court in *Ahtna v. Board of Game*, 3AN-07-8072, in a June 2008 decision on summary judgement held, "As to the identification of the moose hunt in Game Management Unit 13 as a general hunt, without further regulating the hunt to establish a preference for subsistence uses, the court finds that violates A.S. 16.05.258(b)." As the proposal admits, under its management scheme, subsistence would only have a priority over non-residents and residents engaged in the drawing hunts. The law requires a priority over all other consumptive uses, including resident hunters participating in a general hunt who are not engaged in a subsistence pattern of use.

If all Alaskans are subsistence users, the current ANS for moose in GMU 13 is not justifiable. The total harvest in the general hunt would be the subsistence harvest, and this total is far above the current ANS. An ANS that reflects all moose hunting by residents in GMU 13 would necessarily need to be the full allowable harvest in most if not all years. The moose hunt would therefore need to be managed under Tier II.

The proposal therefore depends on two contradictory issues for support. On one hand, it depends on the claim that recent general season harvests exceed the current ANS determination. On the other hand, it depends on the understanding that all resident moose hunters in the general hunt are subsistence users. If all hunters taking moose in the general hunt are subsistence users, all the moose harvested in the general hunt are taken for subsistence uses. If all resident hunters are subsistence hunters, they are entitled to a reasonable opportunity, meaning a hunt "that provides a normally diligent participant with a reasonable expectation of success." AS 16.05.258(f). The success rate in the general hunt does not meet this standard. Under this scenario, the moose hunt in GMU 13 is required to be a Tier II hunt.

The proposed any bull registration hunt is not intended to, and in fact does not, provide a subsistence priority and opportunity to take any bull moose. It is a registration hunt, open to all. The proposed registration hunt is inconsistent with this Board's previous determination that an opportunity to harvest from the any bull population in GMU 13 is necessary to provide for



subsistence uses. The Board has consistently implemented a subsistence any bull hunt either thru Tier II or the CSH for decades.

Moreover, there is a winter registration any bull hunt already in regulation. It was implemented by ADFG one time and it did not work. The strategy to try and implement a subsistence priority through the back door of a registration hunt where permits must be picked up in Glennallen may work for remote, non-road connected areas, but it does not work for road-crossed GMU 13. Moreover, the online application process proposed does not work for many Ahtna people and others in the area who do not have the same convenient, ready access to the internet, but who genuinely depend on a successful hunt to feed their families.

PROPOSAL 44 - Amend 5 AAC 92.072 as it applies to the CSH for moose and caribou in the area described in 5 AAC 92.074(d) (area includes GMU 11, 12 and 13).

Ahtna Tene Nene' Submitted proposal 44. The intent is to limit the department's authority to issue community-based subsistence harvest permits and harvest reports for big game in the Gulkana, Cantwell, Chistochina, Gakona, Mentasta, Tazlina, Chitina, and Kluti Kaah Community Harvest Area for moose and caribou (5 AAC 92.074(d)) to only those communities the board has identified as eligible to participate in this hunt.

Nearly every proposal submitted to the Board for this meeting acknowledges the widespread abuse occurring in this CSH under the current system. Many proposals do not take objection to the original intent of the Board's action creating the CSH for the eight communities and the area described in 92.074(d). This proposal provides a means for retaining the CSH and ending the abuse.

In order to propose changes in the regulation that only apply to the area described in 5 AAC 92.074(d), Ahtna Tene Nene suggests the following changes to Proposal 44. Proposed changes include deleting parts of 5 AAC 92.072 that are specific restrictions and conditions that apply only to the CSH for the Gulkana, Cantwell, Chistochina, Gakona, Mentasta, Tazlina, Chitina, and Kluti Kaah Community Harvest Area for moose and caribou (5 AAC 92.074(d)). A new section is proposed that authorizes the board to consider applications from communities that want to participate in the CSH for that area, and identify those communities that are eligible based on an evaluation of factors consistent with those factors the board used when it first established the CSH.

Amend 5 AAC 92.072. Community subsistence hunt area and permit conditions

Delete the restriction for one locking any bull tag for every three households in (c)(1)(E):

BEGINNING JULY 1, 2014, IN THE COMMUNITY HARVEST HUNT AREA DESCRIBED IN 5 AAC 92.074(D), PERMITS FOR THE HARVEST OF BULL MOOSE THAT DO NOT MEET THE ANTLER RESTRICTIONS FOR OTHER RESIDENT HUNTS IN THE AREA WILL BE LIMITED TO ONE PERMIT FOR EVERY THREE HOUSEHOLDS IN THE COMMUNITY OR GROUP.



This provision has failed to cure the abuse occurring in the CHS while restricting reasonable opportunity and harvest success for most of the hunters from the eight communities that established the CSH for 5 AAC 92.074(d). If not enough any bull moose are available to meet the needs of all the communities considered eligible to participate in the CSH, it is Tier II situation and a Tier II hunt should be implemented. However, there is a better alternative. The Board should adopt this proposal and ensure that only those truly engaged in the community pattern of subsistence use for this area are allowed to participate in the CSH. If the CSH is brought back to its intent – to provide a meaningful opportunity for those communities with a community pattern of subsistence use in this area - there is no need to restrict the harvest opportunity through locking tags or Tier II.

Delete the one caribou bag limit in (c)(2)(A):

may not hold a harvest ticket or other state hunt permit for the same species where the bag limit is the same or for fewer animals during the same regulatory year; however, a person may hold harvest tickets or permits for same-species hunts in areas with a larger bag limit following the close of the season for the community harvest permit, EXCEPT THAT IN UNIT 13, ONLY ONE CARIBOU MAY BE RETAINED PER HOUSEHOLD;

Delete (c)(2)(G) – Two year commitment to CHS:

(G) BEGINNING JULY L, 2016, FOR PARTICIPANTS IN THE COMMUNITY HARVEST HUNT AREA DESCRIBED IN 5 AAC 92.074(D), MUST COMMIT TO PARTICIPATION FOR TWO CONSECUTIVE YEARS.

This provision has failed to have any meaningful impact on the abuses occurring in the CHS. It is an unnecessary burden on ADF&G and the hunt administrator.

Delete (c)(3) – reporting requirement:

(3) IN ADDITION TO THE REQUIREMENTS OF (1) OF THIS SUBSECTION, THE COMMUNITY OR GROUP REPRESENTATIVE MUST SUBMIT A COMPLETE WRITTEN REPORT, ON A FORM PROVIDED BY THE DEPARTMENT, FOR THE COMMUNITY OR GROUP PARTICIPATING IN THE COMMUNITY HARVEST HUNT AREA DESCRIBED IN 5 AAC 92.074(D), THAT DESCRIBES EFFORTS BY THE COMMUNITY OR GROUP TO OBSERVE THE CUSTOMARY AND TRADITIONAL USE PATTERN DESCRIBED BY BOARD FINDINGS FOR THE GAME POPULATIONS HUNTED UNDER THE CONDITIONS OF THIS COMMUNITY HARVEST PERMIT; IN COMPLETING THE REPORT, THE REPRESENTATIVE MUST MAKE EFFORTS TO COLLECT A COMPLETE REPORT FROM EACH HOUSEHOLD THAT IS A MEMBER OF THE COMMUNITY OR GROUP THAT DESCRIBES EFFORTS BY THE HOUSEHOLD TO OBSERVE THE CUSTOMARY AND TRADITIONAL USE PATTERN USING THE EIGHT ELEMENTS DESCRIBED IN THIS PARAGRAPH;

The reporting requirement, which is unique for the communities in the CSH for 5 AAC 92.074(d), has failed to have any meaningful impact in stemming the abuses occurring in this



hunt. A community can simply file a report showing little if any actual practice of the C&T community pattern of subsistence use upon which the hunt was founded, and there is no consequence – so long as the report is “complete – whatever that means. Even if the report is incomplete, the Department has the discretion to ignore this fault and allow the non-complying community to carry on year after year. The report serves no meaningful purpose and is an unnecessary and significant burden the eight communities who established this community pattern of use over generations and continue to practice it as acknowledged in BOG Findings 2006-170.

Delete parts of (f) that refer to the reporting requirement in (c)(3) that is deleted above:

(f) The department may disapprove an application for a community subsistence harvest permit from a community or group that has previously failed to comply with requirements in (c)(1) AND (3) of this section. The failure to report by the community or group representative under (c)(1) AND (3) of this section may result in denial of a community subsistence harvest permit during the following regulatory year. The department must allow a representative the opportunity to request a hearing if the representative fails to submit a complete report as required under (c)(1) AND (3) of this section. Add a new section (j) to 92.072 as follows:

Add a new section to 5 AAC 92.072 as follows:

(j) For the community harvest hunt area described in 5 AAC 92.074(d):

(1) The commissioner or the commissioner's designee may, under this section and 5 AAC 92.052, issue community-based subsistence harvest permits and harvest reports for big game species to a community identified by the board in subsection (6) as eligible to participate in the community-based subsistence harvest for the area.

(2) The board will consider proposals from a community seeking eligibility to participate in the community-based subsistence harvest for the area during regularly scheduled meetings to consider seasons and bag limits for affected species and other issues related to the hunt area.

(3) In evaluating a community's eligibility to participate in the community-based subsistence harvest for the area, the board will consider:

(A) A relationship between members of the community that has been established over a reasonable period of time and is consistent with the definition in subsection (5);

(B) the community's pattern of subsistence uses within the hunt area that has been established over a reasonable period of time and is consistent with the community pattern of use documented in BOG Findings 2006-170.



(4) If the board determines that a community is eligible to participate in the community-based subsistence harvest for the area, it will evaluate the amount necessary to meet the community’s subsistence needs.

(5) For the purposes of this section, a "community" is a group of 25 or more members linked by their participation in a consistent pattern of taking and use of a wide diversity of subsistence resources in the area identified in 5 AAC 92.074, and which provides substantial economic, cultural or social, and nutritional elements of the subsistence way of life of the community and its members.

(6) The following communities are eligible to participate in the community-based subsistence harvest for the area defined in 5 AAC 92.074(d).

Gulkana, Cantwell, Chistochina, Gakona, Mentasta, Tazlina, Chitina, and Kluti Kaah.

PROPOSAL 90 - Amend 5 AAC 92.074(d) to expand the Copper Basin community subsistence harvest hunt area to include a part of Unit 12.

Ahtna Tene Nene’ submitted this proposal. It would add “that portion within the Nabesna River drainage west of the east bank of the Nabesna river upstream from the southern boundary of the Tetlin National Wildlife Refuge” to the hunt area described in 5 AAC 92.074(d).

This part of the traditional hunting territory of the eight communities that established the Copper Basin community subsistence hunt area was inadvertently left out. Including it will provide more hunting opportunity.

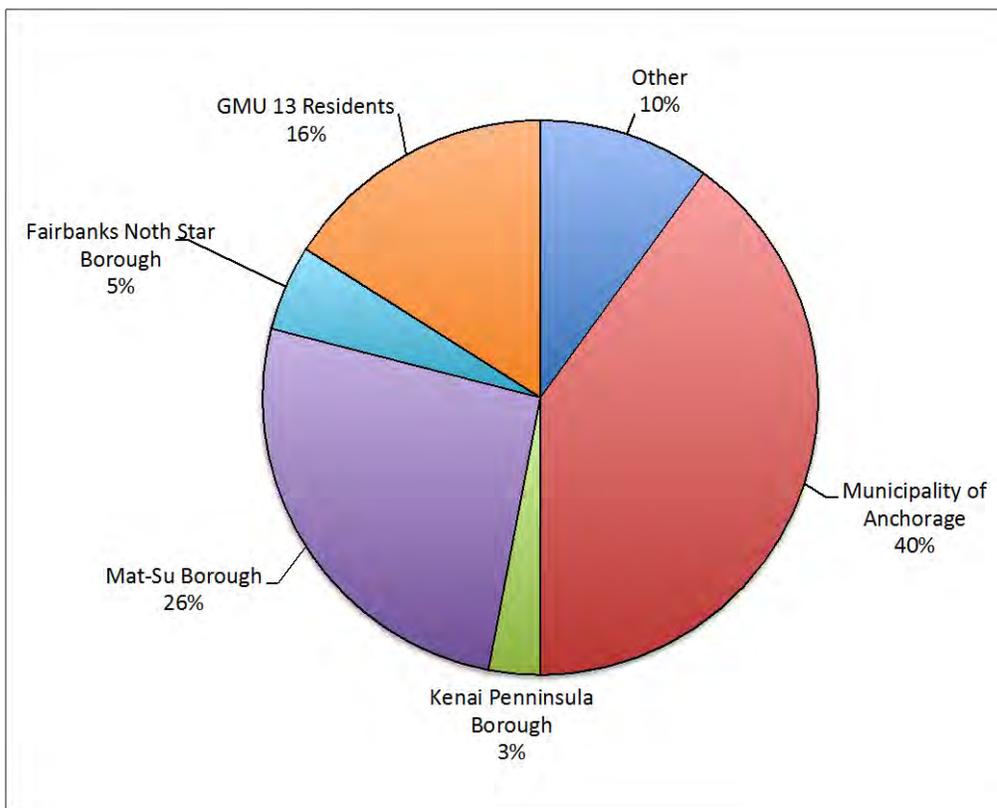
From: Bill Simeone

Date: October 6, 2016

Email: wesimeone2@gmail.com

The following addresses the failure of the State to provide Ahtna communities with a reasonable opportunity to hunt moose in Game Management Unit 13 (GMU 13). Traditional Ahtna territory encompasses all of GMU 13, which is the most heavily hunted GMU in Alaska. People from Fairbanks, Anchorage, the MatSu borough, and Kenai Peninsula, along with GMU 13 residents, hunt the big game resources of GMU 13. The majority of these hunters come from outside of GMU 13 (Figure 1).

Figure 1. Percentage of GMU 13 Moose Hunters by Residence, 1992-2008



Competition is fierce. During the years 1992-2015 an average of 3,469 people hunted moose in GMU 13 every year. An average of 4,402 people hunted caribou each year during the same time period (Table 1).



Table 1. Moose and caribou hunters in GMU 13, 1992-2015

Year	Total Hunters For Moose GMU 13	Successful Moose Harvests		Total Hunters For Caribou GMU 13	Successful Caribou Harvests	
		Residents of GMU 13	Non-Residents of GMU 13		All residents of GMU 13	Non-unit resident
1992	3,216	100	516	6,367	734	3,155
1993	5,809	150	1021	8,040	651	4,419
1994	6,072	120	741	6,645	383	2,915
1995	6,082	164	714	10,553	527	4,157
1996	6,135	161	766	17,600	464	3,814
1997	5,943	143	704	13,070	295	3,570
1998	5,445	140	702	8,146	418	2,478
1999	5,050	154	574	6,612	303	2,103
2000	4,143	107	404	2,470	258	781
2001	3,588	104	324	3,113	367	1,122
2002	3,461	114	458	3,129	351	976
2003	3,362	120	481	2,523	216	786
2004	3,620	109	494	2,819	293	939
2005	3,826	100	469	4,860	408	2,386
2006	4,175	106	579	5,528	373	2,687
2007	3,921	131	519	2,991	255	1,066
2008	4,306	139	601	3,154	254	1,068
2009	4,398	158	692	2,053	273	481
2010	4,398	74	773	4,443	111	1,791
2011	4,220	108	742	3,269	81	1,953
2012	4,935	78	575	6,263	100	3,622
2013	5,239	58	590	6,729	19	2,284
2014	4,774	73	753	4,742	53	2,657
2015	4,899	79	854	5,737	47	3,347
Total	111,017	2,790	15,046	140,856	7,234	54,557
Average	3,469	87	470	4,402	226	1,705

Source: <https://secure.wildlife.alaska.gov/index.cfm?adfg=harvest.main>
 Accessed October 4, 2016

Moose harvest levels for non-residents of GMU 13 averaged 470 animals between the years 1992 and 2015. During the same period, residents of GMU 13 harvested an average of 87 moose per year. Caribou harvest levels for non-residents of GMU 13 averaged 1,705 caribou between the years 1992 and 2015. During the same period, residents of GMU 13 averaged 226 caribou per year (Table 1).

To balance the public’s appetite for hunting in GMU 13 with the need to conserve moose populations, maintain sustainable harvests, and give hunters a reasonable opportunity for success, the Board of Game (BOG) and the Alaska Department of Fish and Game (ADF&G) have tried various management strategies



with the goal of “maximizing human harvest.” These strategies have resulted in reduced or limited hunting opportunities for the Ahtna and the residents of GMU 13.

Management strategies include varying the length of hunting seasons from as short as 5 days to as long as 30 days and restricting bag limits, including restricting hunters to taking male moose with spike or forked antlers or bulls with 50-inch spread with three brow tines. One of the main purposes for this limitation is to allow “for unlimited hunter participation even following a severe winter when hunting seasons were severely restricted or closed in adjacent areas”(Schwart et al. 1993). This strategy has resulted in increased hunting pressure in GMU 13. For example, the highest number of hunters ever reported in GMU 13 were for the years 1994 through 1997 which, according to the ADF&G area management report, was the result of longer seasons and the spike/fork 50 inch bag limit (Moose Area Management Report 1998: p 114) (see Table 1).

In 1995 the BOG instituted a TIER II hunt for moose issuing 150 permits. In a 2006 the BOG concluded that “virtually since it inception, the Tier II subsistence permit system has been plagued with public complaints about inequities, unfairness and false applications” (Findings for the Alaska Board of Game 2006-170). Problems with the TIER II included the following:

- A majority of the permits went to urban residents.
- Tier II resulted in a lack of opportunity for many young hunters
- Subsistence hunts were not consistent with the 8 criteria described by the Joint Boards.

In 2009 the BOG repealed TIER II hunts in GMU 13, set the Amount Necessary for Subsistence (ANS) for “any moose” at between 300 and 600 animals per year, and established a Community Subsistence Hunt (CSH). By instituting a CSH the BOG intended to increase reasonable opportunities for hunting success by the Ahtna and residents of GMU 13. Under the BOG’s original intent CSH hunters were provided the opportunity to take up to 100 any bull moose. This provided reasonable opportunity for success and allowed the Ahtna to follow their tradition of taking any moose presenting itself to the hunter.

However, in 2010 as the result of a Kenai Superior Court decision that later held to be moot on appeal, the BOG opened the CSH to any group of 25 people that wished to



participate and would make efforts to follow the Customary and Traditional (C&T) pattern of use. Following this decision the BOG reduced the any bull quota from 100 to 70 animals.

The results of the BOG’s action are reflected in Table 2. As the number of community groups has increased successful moose harvests by the Ahtna Tene group have declined. For example, in 2009 when there were only two groups participating in the CSH, the Ahtna Tene group was able to meet their subsistence needs by harvesting 100 moose (70 any bull and 30 antler legal bulls). In 2013 when 43 groups participated in the CSH hunt, the Ahtna Tene group was not able to meet its subsistence needs and harvested only 30 moose of the allowable harvest. In 2016, with 73 groups participating in the CSH, the Ahtna Tene group was able to harvest only 15 moose (9 any bulls and 6 antler legal bulls). As the number of CSH groups has increased so have the number of any bull moose tags issued by ADF&G. In 2014 there were 281 tags issued compared to 481 in 2016 (Personal communication with Jamie Van Lanin, ADF&G). This has led to increased competition among groups.

Table 2. CM300 Copper Basin Community Subsistence Moose Hunt

Year	Total Number of CSH Groups	Moose Harvested	
		Ahtna Tene Group	All Other Groups
2016	73	15	173
2015	43	36	131
2014	43	33	117
2013	45	28	128
2012	19	37	61
2011	9	56	30
2010	No Hunt	No Hunt	No Hunt
2009	2	100	3

Data includes any-bull harvest and antler legal harvests

In summary: while the BOG has made attempts to increase hunting opportunity for the Ahtna and other residents of GMU 13 its management strategies have led to increased competition and declining harvests for the Ahtna.



Ahtna Tene Nene' Legal Analysis in Support of Proposals Submitted to the Alaska Board of Game for the March 17, 2017 Meeting

Ahtna's primary request is that the BOG reform the community subsistence hunt (CSH) to ensure that only those communities that are: 1) a real "community of subsistence users"; and 2) are genuinely engaged in a community pattern of subsistence use for the area described in 5 AAC 92.074(d) should be eligible to participate in the CSH. This request is made through the revised proposal 44 included in Ahtna Then Nene's March 3 2017 comments to the BOG.

However, a Tier II hunt for the current 100 any bull moose allocated for the CSH (or a larger allocation should the BOG decide such) may be necessary either because the BOG's action reforming the CSH does not take effect for the 2017 season, or because the BOG fails to take any action reducing the number of communities eligible for the CSH quota established for the CSH. If a Tier II hunt is required, it should be limited to the 1542 households that applied for the 2016 CSH and any additional households that have been declared eligible for the 2017 CSH for moose in the 2017 season. It would not be a statewide Tier II application process open to all Alaskan residents. This makes practical and legal sense because the 1542 CSH households are the only Alaskan households that are authorized to harvest the 100 any bulls. 5 AAC 85.045(a)(11)(B). Therefore, these CSH households are the only Alaskans who do not have a reasonable opportunity to harvest the limited allocation of any bull moose.

There is precedent for conducting a Tier II any bull moose hunt for GMU 13 even though the overall moose population is above the current amount necessary for subsistence (ANS) determination. The Subsistence Division can verify that for over a decade there was a Tier II any bull moose hunt, TM300, for GMU 13 even though the spike fork/50 inch moose hunt was conducted as a general hunt because that population was above ANS. This management structure for the GMU moose hunt changed with the establishment of the community hunt in 2009 when the Tier II any bull hunt was replaced by any bull hunting opportunity available for those enrolled in the CSH.

In any event, the current ANS of 300-600 moose for GMU 13 is, in our view, no longer justified. According to the paper for Bill Simeone attached to Ahtna Tene Nene's comments, there were 4,889 total moose hunters in GMU in 2015. Only 854 harvested a moose, and only 79 moose were harvested by residents of GMU 13. The BOG treats all¹ of these moose hunters as Tier I subsistence users. Therefore all of the 854 moose that were harvested were for subsistence. This does not line up with the ANS which was developed under the assumption that there would be far fewer "subsistence" hunters in the area. See BOG March 2009 transcript that is attached to Ahtna Tene Nene's comments. The 17 percent success rate for all GMU 13 moose hunters demonstrates a lack of reasonable opportunity. Unless the BOG reforms this hunt, the entire moose hunt in GMU 13 would be subject to Tier II.

The legal justification for implementing Tier II before the establishment of the CSH is the same as the justification for Ahtna's present request. There is the wide discretion vested in the BOG to define what constitutes a subsistence wildlife population. The discretion is constrained

¹ A small number of these hunters may be part of the drawing hunt for moose.



only in that the determination must be “reasonably related to the purposes of the subsistence law.” *Native Village of Elim v. State*, 990 P.2d 1, 11 (Alaska 1999). Prior to the establishment of the CSH in 2009, the board identified, for the purposes of implementing the subsistence law and for conservation, two distinct moose populations within GMU 13, the any bull population and the spike fork/50 inch population. Both populations required a different management structure. Because there was not enough of the any bull population to provide a reasonable opportunity for all subsistence uses, that population was managed under a Tier II regime. The other antler-restricted moose population was managed under a general hunt.

That same rationale exists now for the CSH. The opportunity for taking any bull moose is necessary to provide a reasonable opportunity to those participating in the CSH. The sustainable harvest from the any bull population is not sufficient to provide a reasonable opportunity to all the 1542 household that unexpectedly enrolled in the 2016 CSH. It is therefore a classic Tier II situation. AS 16.05.258(b)(4).

Further support is provided by the ruling in *Alaska Fish and Wildlife Fund v. State*, 347 P.3d 97, 104-107 (2015), an opinion upholding the CSH as currently structured.

Here, after the Board identified the two customary and traditional subsistence use patterns of moose and caribou in the Copper Basin -- the community use pattern and the individual use pattern -- it was statutorily required to " provide a reasonable opportunity" for these subsistence uses of the relevant game populations. The Board's findings described two very different use patterns, with different hunting areas and seasons, different parts of the animal consumed, and different cultural and social traditions associated with the hunt. Because both patterns are " subsistence uses," the Board was required to provide " a reasonable opportunity" for each of them. . . .

. . . the Board made findings sufficient to support some season and size differences between community and individual hunts. Simply put, the community hunts are more likely to occur close to home, where it is harder to find moose; a longer season and fewer size restrictions help counter this difficulty. During a 2011 Board of Game proceeding, a supporter of community hunts testified that the " 50-inch antlered moose is. . . pretty scarce around where I hunt and it's usually pretty warm. They're usually way up in the mountains. Having a restriction for 50-inch antlers ... makes [it] a hardship for. . . getting a moose.. . I took my daughter there last year, and ... we saw a lot of bull moose, but ... they aren't ... 50-inch moose. All small antlers." At an earlier hearing in 2010, there was testimony that in early fall " all the moose are high during that time and the three brow tine and four brow tines are up high [Y]ou might find a spike fork near a road, but. . .people didn't really get any moose."

The Court's holding supports, even requires Tier II for the CSH for 2016. The Court affirmed that after identifying the distinct community pattern of subsistence use, the Board must provide a reasonable opportunity for those engaged in that use pattern. The Court also upheld providing the CSH the any bull opportunity in order to provide a reasonable opportunity for the CSH hunters. The Court held that the any bull hunting opportunity can be provided exclusively to the



CSH. The court found the Board had created a record which supported providing the any bull opportunity to the CSH and restricting other subsistence hunters to the spike fork/50 inch population. The Court's holding therefore acknowledges and affirms the Board's treatment of the moose population in the CSH area as being managed as two distinct populations for the purposes of implementing the subsistence law, the any bull population and the spike fork/50 inch population.



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STATE OF ALASKA
ALASKA DEPARTMENT OF FISH AND GAME
BOARD OF GAME
TRANSCRIPT OF PROCEEDINGS (EXCERPT):
SOUTHCENTRAL AND SOUTHWEST REGIONS
MEETING OF THE BOARD OF GAME, CONTINUED

EXCERPTS OF
STAFF PRESENTATIONS, BOARD DISCUSSIONS, AND DECISIONS

March 5, 2009 - Pages 1 through 144

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Exhibit D
Page 1



1 reading this chart correctly. And that was one of the things
2 that I used for my decision in addition to what Tobey just
3 mentioned, was to try to come up with some sort of figure that
4 absolutely secured the Tier II subsistence hunting in Unit 13
5 in the even that that moose population could only -- you could
6 only harvest 300 moose. And I think we can clearly do that at
7 300. I think that's more than ample, five, six times the
8 number that's been taken on that Tier II hunt in the past, and
9 that was part of my justification as well.

10 CHAIRPERSON JUDKINS: Thank you.

11 Teresa?

12 MS. SAGER ALBAUGH: Thank you, Mr. Chairman. I'd
13 just like to ask the department of law to comment on the --
14 how the ANS -- it's my understanding that the ANS is typically
15 determined based upon data that is gathered by the subsistence
16 division through a fairly structured community survey process.
17 And I'm wondering what the regulatory framework is that allows
18 to expand beyond that to determine ANS numbers based on other
19 input or information, if there is any.

20 MR. SAXBY: Well, I'd invite the experienced staff
21 from the subsistence division to correct me if -- or jump in
22 if they think I'm missing something, but I don't think it's
23 accurate at all to say that ANS has been only based on input,
24 a report or a worksheet from the subsistence division. I
25 think the board has always relied on public testimony, because



1 all the reports can give you in general are harvest, and
2 sometimes they can -- harvest figures over the past and often
3 where people live who participate in that harvest, but they
4 still can't tell you how many of those people, especially if,
5 say, it was a -- over many of those years it was just an open
6 harvest. They can't tell you how many of those people were
7 harvesting for purposes of subsistence uses versus how many
8 were harvesting for some other purpose, how many were even
9 trophy hunters, for example. I mean, there's attempts to do
10 that. There are attempts to help you understand the customary
11 and traditional use pattern, and their -- it's possible for
12 the board to look at the reports and decide in general that
13 people in a given community tend to participate in a pattern,
14 but it still doesn't give you -- the board still has to apply
15 its judgment in deciding what the final number is based on all
16 the evidence that comes in every time.

17 And that's why I think they'll frankly tell you that
18 they won't recommend an ANS to you because of that very fact:
19 It calls for judgment. So they'll give you all the data they
20 can give you, and there's been -- there was a lot of data that
21 went into the 600 number when that was chosen back in 1992.

22 But it's also maybe important for you to understand
23 historically that it's been done in different ways, depending
24 on how the law has been written and changed by the legislature
25 over the years and how it's been reinterpreted by courts. For

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1 example, back in the '80s if the board were going to be doing
2 a finding like this, it would have looked only at local
3 harvest many times. In the mid '90s, because of intervening
4 legal changes, the board started looking more and more at
5 statewide harvest, and sometimes the board would just look at
6 total statewide take and base it on that and not try to draw
7 any distinctions at all as to whether people -- in fact, often
8 in the mid '90s, that's what the board would do. They would
9 just say, okay, the Alaska harvest is whatever, so we're going
10 to set the range on that basis because we can't tell who the
11 subsistence users are and who they aren't.

12 More recently as the board has realized more and
13 more that it -- that doing that often ends up being just a
14 setup in the long run for drifting into Tier II and being
15 difficult to get out. The board's tried harder and harder to
16 determine some percentage of the total Alaskan take, and they
17 look at local harvest and they look at other things. It's
18 often fair for the board to assume that the local harvest
19 figures are at least something close to the bottom--that's the
20 starting point for whatever the ANS number would be--and then
21 decide how much higher than the local harvest it needs to go
22 to satisfy all subsistence users.

23 So I guess to summarize, it's always called for
24 judgment by the board based on all the evidence that comes in.

25 MS. SAGER ALBAUGH: Thank you.

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Exhibit D
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1 CHAIRPERSON JUDKINS: You know, another thing that I
2 never thought about until I started (indiscernible) some of
3 these meetings we've had that there's been kind of a change,
4 too, a lot of them. State subsistence users will hunt -- if
5 they get a Tier II permit for Nelchina or for some other
6 population, they'll hunt that, but if they don't, they'll go
7 off, you know -- I've had times when I put together a group of
8 five or six people and went all the way to the North Slope to
9 get our whole winter's supply of meat off the caribou herd up
10 there that was accessible to us (indiscernible) of
11 transportation, where normally we would've been at Nelchina if
12 we'd had a permit and the season had still been open. So
13 subsistence users have got, you know, (indiscernible) the
14 criterion that wants to combine you right around your area you
15 live, but I think times have changed, and they're a lot more
16 mobile than they were.

17 But, you know, in our meeting in Juneau, we made
18 some ANS decisions on goats, and we followed kind of what
19 Kevin's saying, a whole compilation of thoughts and ideas and
20 testimony came in that put that decision together, and it
21 wasn't based strictly on what we got from the subsistence
22 folks.

23 Marianne's (indiscernible), and I don't know whether
24 she wants to comment on this issue at this point or not.

25 What's your pleasure, board? Lew?

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1 MR. BRADLEY: Yeah, Mr. Chairman. We spent five
2 hours and -- on this in the last couple of nights or -- and
3 like Kevin said, that 600 was -- I think everybody was
4 agreeable to that. Going down to 300 to 600, the main thing
5 is we want to try to keep out of Tier II, and it seems like
6 this would do that, and I'd be in support of it.

7 MR. GRUSSENDORF: Mr. Chairman?

8 CHAIRPERSON JUDKINS: Yes?

9 MR. GRUSSENDORF: Why doesn't Mr. Spraker make that
10 amendment for us?

11 MR. SPRAKER: Thank you, Mr. Grussendorf.

12 Mr. Chairman, I would like to go ahead and make an
13 amendment to proposal 96 that we vote on a new ANS for Unit 13
14 for moose, and that ANS would be 300 to 600 moose.

15 MR. BRADLEY: Second.

16 CHAIRPERSON JUDKINS: Thank you.

17 Since we discussed this pretty thoroughly before the
18 motion was made, I suppose we've (indiscernible) our thoughts.
19 And we discussed during the meeting and elsewhere there's
20 probably some significant financial considerations on some
21 folks, depending on where they fall in the whole process.

22 Are you ready for the question?

23 MR. GRUSSENDORF: Question.

24 MS. TIBBLES: Okay. The question is on the --

25 CHAIRPERSON JUDKINS: Pardon me.



1 MS. TIBBLES: Okay.

2 CHAIRPERSON JUDKINS: Thank you.

3 MR. SPRAKER: We've got to do the amendment first
4 off.

5 MR. SAXBY: Just to help the board with their record
6 a little bit, Mr. Chairman, I guess I'd also point out that
7 there is actually some congruence between that 300 figure and
8 what we've just been talking about. I think there is an RC in
9 the record, maybe 98 from Ahtna, that suggests that the
10 community harvest for Ahtna is in the neighborhood of 200
11 moose for all residents of the villages in Unit 13. And so
12 this follows that model I was just talking about where the
13 board looks at the local harvest and then adds some to account
14 for other harvest, so 300 is bigger than 200, so you're
15 actually doing that here. So it fits with other evidence
16 that's in the record as well.

17 CHAIRPERSON JUDKINS: Thank you. I should've
18 brought that out that I recall reading it and saying that's
19 one reason to go in this direction.

20 MR. SAXBY: 89 -- I was dyslexic, Mr. Chairman.

21 CHAIRPERSON JUDKINS: 89? That's fine.

22 Board members?

23 Call the roll, please.

24 MS. TIBBLES: The motion is for setting an ANS for
25 Unit 13 moose of a range of 300 to 600. Grussendorf?

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1 MR. GRUSSENDORF: Yes.
2 MS. TIBBLES: Sager Albaugh?
3 MS. SAGER ALBAUGH: Yes.
4 MS. TIBBLES: Judkins?
5 CHAIRPERSON JUDKINS: Yes.
6 MS. TIBBLES: Bell?
7 MR. BELL: Yes.
8 MS. TIBBLES: Bradley?
9 MR. BRADLEY: Yes.
10 MS. TIBBLES: Spraker?
11 MR. SPRAKER: Yes.
12 MS. TIBBLES: Hoffman?
13 MR. HOFFMAN: Yes.
14 MS. TIBBLES: The motion carries 7 to 0.
15 CHAIRPERSON JUDKINS: Continuing on, Mr. Spraker?
16 MR. SPRAKER: Thank you, Mr. Chairman. At this
17 time, before we take up proposal 84, would the department like
18 to make some comments or a summary? I think the director
19 might have some comments for us.
20 (Whispered conversation)
21 CHAIRPERSON JUDKINS: This is one of the proposals
22 that you were conflicted out of. Just to clarify, I think --
23 I understand it's -- your husband is a member of the advisory
24 committee that was involved in this proposal quite extensively
25 and voted on it.



1 also seemed to be agreement that harvesting a moose and a
2 caribou in the same year from that area was not absolutely
3 necessary. So there may be some allowance there in terms of
4 not necessarily having both moose and caribou go to individual
5 in a season.

6 And all this, Mr. Chairman, wrapped up into what is
7 now RC 109, the ideas, the concepts that were generated from
8 those two meetings, and so that's available for your use.

9 And, Mr. Chairman, that's my notes based on the recollections
10 and the notes that were taken on flip charts that are here
11 behind me during those meetings. I certainly, as we go
12 through RC 109 or as you deliberate, certainly if there are
13 points that need to be clarified or additional information
14 that people that were participants want to bring to the table,
15 certainly that would be appropriate, I think. Thank you.

16 CHAIRPERSON JUDKINS: Thank you.

17 (Whispered conversation)

18 CHAIRPERSON JUDKINS: Moving on, gentlemen. What's
19 your pleasure? Ted?

20 MR. SPRAKER: Thank you, Mr. Chairman. I guess at
21 this time we need to go ahead and adopt substitute language
22 proposal 84. This -- what I'd like to -- I'd like to amend
23 proposal 84 to use substitute language found in 84A, and it's
24 also shown as RC 109.

25 MR. BELL: Second.

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1 MR. GRUSSENDORF: No objection.

2 CHAIRPERSON JUDKINS: No objection. So be it.

3 Would you like to speak to your motion, Mr. Spraker?

4 MR. SPRAKER: Thank you, Mr. Chairman. Maybe I'd
5 like to speak to my intent, broad intent.

6 The substitute language in 84A gives the board a
7 kind of a skeleton breakdown of potential seasons and bag
8 limits and harvest levels and so forth for community harvest,
9 for Tier I hunts, for a general hunt, a Tier-I-plus situation,
10 and also a very limited opportunity for nonresident hunting
11 for moose. There's no nonresident hunting that I can find in
12 this proposal for caribou.

13 As far as trying to make recommendations, I think it
14 would be easier -- at least it would be easier for me if we
15 dealt with the moose part of this proposal first,
16 5 AAC 85.045, hunting seasons and bag limits for moose, about
17 midway on the page there, and start looking at the community
18 harvest and some of the decisions we need to make, because we
19 need to make decisions on what is the board going to recommend
20 for a quota or some sort of upper limit for the community
21 harvest. And then, of course, we have a lot of seasons and
22 bag limits for other hunts we need to deal with.

23 We just heard from the board concerning the comments
24 and so forth from the meetings. I'd like to offer a few
25 comments here just looking at the -- kind of the trend in the



1 area and the harvest and so forth in the area. And if you
2 look at the number of moose taken under Tier II, and this is
3 from the local residents, it was 46. Then you look at the
4 number of -- well, I'll just stay with moose for now. And you
5 also -- we've heard the number of 200, but what I would like
6 to see -- I think this is very fair considering there were 46
7 moose taken in the Tier II hunt by local residents in talking
8 about the community harvest. I would like to see the
9 community harvest level set at 100 moose initially. Now, this
10 may move up and down as the population moves up and down and
11 community situations change.

12 I'd also like to make it very clear that I would
13 recommend that this 100 moose is taken in Units 11, 13, a
14 portion of 12, and a portion of 20. And my hopes are that the
15 Ahtna folks would be able to provide a map showing these areas
16 and traditional hunting areas and so forth for this community
17 harvest. . And that harvest of up to 100 moose--it'd be any
18 bull--would be available in those areas.

19 Another thing that I want to make sure that's on the
20 record is that we are substantially increasing the harvest in
21 Unit 13 as far as opportunity. You know, this proposal 84
22 also includes up to 200 permits for any bull. So there's a
23 lot of new opportunities in the area for people that want to
24 be, you know, involved in community harvest. Of course, it's
25 open for everyone in the state. But as far as other

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1 opportunities, there's the tags for any bulls, and then
2 there's a general season for spike-fork 50 four-brow-tine, and
3 I think that it's also time that we also include a little bit
4 of harvest for nonresidents, and that would be determined kind
5 of by the department. And there's up-to language for 150
6 tags.

7 Mr. Chairman, I'll kind of stop there. I think I've
8 laid out my thoughts on this as far as these first steps, and
9 listen to other board members.

10 CHAIRPERSON JUDKINS: Before we get to that, I
11 listened to Director Larsen, but I didn't go back to the
12 staff, which we normally do when we introduce a proposal. Did
13 you want to make comments at this time on this as it goes,
14 or --

15 MR. TOBEY: Mr. Chair, no, not at this time.

16 CHAIRPERSON JUDKINS: Okay. I didn't mean to -- all
17 right.

18 Kevin?

19 MR. SAXBY: Mr. Chairman, if you want someone to
20 lead the board through -- it's pretty complicated. If you
21 want someone to lead the board through RC 109, I'd be happy to
22 do that. I've been as involved as anyone is in the actual
23 language, and I could explain the reasoning for why things are
24 there. If you don't, if you just want to dive in and take it
25 on one part at a time, I'll just sit here and --



1 these fancy Internet programs these days, so we're able to
2 actually have somebody bring in their Tier II permit, which
3 does have their name on it. We fill out a transfer within our
4 administration system, we reprint the permit, and we keep the
5 original in our office, and we send the new hunter out the
6 door with a new name on the permit itself. So at least under
7 the current system administered by the state, we have a way to
8 deal with that, but under this, the actual hunt administrator
9 would have to take on that type of duty as well, I'd assume.

10 CHAIRPERSON JUDKINS: Thank you.

11 MR. SPRAKER: And, Becky, does that happen often?

12 MS. SCHWANKE: Mr. Chair. You know, it takes a
13 while for these things to catch on. We definitely had quite a
14 few transfers come through our Glennallen office. I can't
15 speak for how many came through the Anchorage or the Palmer
16 office as well. So I want to say probably less than two dozen
17 a hunt year, so it's a fairly small number.

18 MR. SPRAKER: A low number, not hundreds. Okay.

19 CHAIRPERSON JUDKINS: What's your pleasure, folks?
20 You ready to move on to the next section or are there more
21 questions on the amendment (indiscernible)? Did you want to
22 go through the rest of the language that's highlighted and
23 amend it in now, or --

24 MR. SAXBY: Yeah. The next logical place to me is
25 where Member Spraker was, which is the seasons and bag limits,



1 Mr. Chairman. Assuming that the board decides to adopt the
2 community harvest hunt area for the eight villages that are
3 named, then it's set up. And assuming you adopt the area
4 that's described there, we've had to go through and change the
5 season and bag limit regulations for moose. So beginning at
6 the bottom of pag 1 you'll see in Unit 11 it's one ruled by
7 community harvest permit only; there's a separate season and
8 bag limit, August 10 to September 20 for that hunt. Up to X
9 number of bulls may be taken. That's where you put an
10 asterisk, and the board needs to fill in that number.

11 And we can do this one of several ways. You can --
12 you could designate separate amounts of any bull harvest that
13 should be occurring in Unit 11 versus Unit 13 versus Unit 12
14 versus Unit 20, or you can do it as you've done in other cases
15 where you say that a total number in conjunction with the
16 harvests in other areas is the up-to amount. And this is
17 where Member Spraker was talking about a hundred any bulls.

18 And then there's a -- in order for folks to meet
19 their subsistence needs, because the amounts of any bulls that
20 may be available are not probably enough to provide for the
21 entire subsistence need, there's a further opportunity -- the
22 remainder would be made up by people being allowed to take a
23 spike-fork 50 four-brow-tine -- oh, it's expressed as three or
24 more brow tines here. You might put an asterisk there and
25 decide whether you want it to be three or four.

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1 So what would happen is the department would
2 designate a certain -- because it's up to whatever number you
3 set, the department would designate each year the amounts of
4 any bull that could be taken under the community harvest
5 permit and even where those could be taken, depending on how
6 you set it up. And then the remaining harvest by the
7 community subscribers is spike-fork 50-inch four-brow-tine or
8 three-brow-tine.

9 And that's -- we've done that same thing all the way
10 through -- we've done it in Unit 12 and in Unit 13 and in
11 Unit 14. I just need to point out to the board, put an
12 asterisk next to Unit 12 and an asterisk next to the one for
13 Unit 20A there. This only shows a small part of the moose
14 hunting seasons and bag limits for Unit 12 and Unit 20A.
15 There would actually be a lot more in the book. We're not
16 proposing to change any of the existing ones with this
17 proposal. We just didn't have time to get all those existing
18 ones in here. These would be -- for Unit 12 and for Unit 20A,
19 these would be additions to all the other existing
20 regulations.

21 For Unit 13, because the testimony from the
22 department has been that the harvestable surplus exceeds the
23 amount necessary, the 600 level, which is the high end of the
24 ANS range you just set, the board is free to provide -- is in
25 a Tier-I-plus situation, and is free to provide for other

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1 opportunities besides subsistence. And so for Unit 13 we
2 have -- we still have an obligation to provide a reasonable
3 opportunity for subsistence uses, and we also include an
4 opportunity for an any-bull drawing hunt by residents and a
5 spike-fork 50 -- or not spike-fork -- a 50-inch, four-brow-
6 tine drawing hunt, a very limited one, by nonresidents.

7 And I wanted to talk a little bit more about the
8 other subsistence opportunity for residents. That's the
9 reference you see there on the third page where it says one
10 bull by drawing permit only up to -- it says up to 200 permits
11 may be issued. Oh, no, I'm sorry, that's the -- that's not
12 it. It's at the bottom of the second page; that is the other
13 subsistence opportunity where it says one bull with spike-fork
14 antlers -- oops, we missed one here. No, we didn't, it's just
15 not in new language. It is at the top, and it's not bold and
16 underlined language. It says one bull with spike-fork antlers
17 or 50-inch antlers or antlers with four brow tines on one
18 side. And it's essentially a -- we're just keeping kind of
19 the general hunt that we've had there for the last several
20 years. The board long ago determined that that general hunt
21 does provide a reasonable opportunity for your average,
22 ordinary subsistence user, and so by keeping that in place,
23 we're maintaining a reasonable opportunity for subsistence
24 uses. And then the addition is that drawing permit for
25 residents and trophy bull drawing permit for nonresidents.

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1 So you'll notice that there are longer -- there's a
2 slightly longer season for the community harvest permit.
3 Those folks would be able to get in the field earlier than
4 other hunters. The season doesn't change for the folks who've
5 been hunting under the general season in Unit 13 for a long
6 time, and the drawing season is the same.

7 CHAIRPERSON JUDKINS: Ted?

8 MR. SPRAKER: Thank you, Mr. Chairman. Well, I have
9 several asterisks that we probably should address. The first
10 one is at the top of page 2, and this is the Unit 11 moose.
11 And the question was the three-brow-tines, 50-inch antlers, or
12 antlers with three or more brow tines on at least one side,
13 that concern, because that's different than Unit 13. But I
14 just wanted to point out that I think that should remain the
15 same. That's what we've had in Unit 11. We even allow
16 nonresidents to take 50-inch bulls with three or more brow
17 tines, and that's kind of been in place for a long time, and I
18 don't see why we should make a change there.

19 The next one was Unit 12. And in looking at the
20 season for hunting moose in Unit 12, this is quite an addition
21 to the season length in Unit 12. And has the department
22 talked to the folks up there in Tok? And I know this is new
23 for everyone, but -- what did the director do? Leave?

24 (Laughter)

25 MR. SPRAKER: Kim? I mean, it's not a huge concern



1 now because we're not trying to iron out every detail, but I
2 just wanted a kind of a feeling on whether or not this was
3 going to work in Unit 12, and (indiscernible) talked to the
4 managers there. But anyway, that's probably something we can
5 deal with later on.

6 Mr. Chairman, as far as the other issues, you know,
7 again, because we're at least a hundred moose over -- at least
8 200 moose over the ANS for allowable harvest in 13, you know,
9 I think we certainly have the freedom to offer all these
10 additional hunting opportunities, including a very small
11 number of nonresident permits. And although that number is
12 150 -- up to 150, you know, just speaking for myself, I would
13 rather see this number a little lower than that, let the
14 department make that decision, but, you know, my intent is not
15 to see the department issue all 150 permits unless you feel
16 like there's places that you can direct hunters and take -- or
17 issue these 150 permits for nonresidents, because this is the
18 first time since, what, '01 we've had nonresidents in 13?

19 MR. TOBEY: Mr. Chair?

20 CHAIRPERSON JUDKINS: Yes.

21 MR. TOBEY: There's two ways to deal with the
22 permits. You could issue a number of permits and they could
23 be general by good unit-wide, or you could issue the permits
24 on a subunit basis for the nonresidents--I presume that what
25 you'd be talking about is the nonresidents--and funnel them



1 into areas -- the majority of them into areas that have seen
2 the biggest increase in moose numbers. So either alternative
3 is available.

4 MR. SPRAKER: Mr. Chairman, I really think that we
5 need to not get into the weeds on that one and let the
6 department sort that one out. And I think that's the best way
7 to do that on those tags.

8 Mr. Chairman, let me go back to one of my original
9 statements as far as trying to determine these numbers to fill
10 in-on the X's. And again I feel like a good starting point is
11 to let the department have up to 100 bulls, any bull, for the
12 community harvest, and then let the department spread this
13 harvest over these four areas. And the reason I have used 100
14 is, again, you know, the TM300 harvest was 46, and with the
15 other opportunities to harvest under the federal permit, which
16 is still available, and also with the caribou considerations,
17 both state and federal that's available, you know, I think
18 this is a very good start. And again, like you said, if it's
19 not working properly, we can come back in two years and
20 readjust that number. But I think 100 to fill in those four
21 places where we have X's would probably be a very justifiable
22 start.

23 CHAIRPERSON JUDKINS: I agree with that. I think we
24 did all agree that the federal numbers would be included, that
25 they would report them in the community harvest

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1 (indiscernible).

2 UNIDENTIFIED SPEAKER: Right, yeah.

3 CHAIRPERSON JUDKINS: Is that a motion?

4 MR. SPRAKER: That's a motion.

5 MR. BRADLEY: Second.

6 CHAIRPERSON JUDKINS: Would you delineate just where
7 that 100 is going to go in the book here?

8 (Whispered conversation)

9 MS. SCHWANKE: For clarification, you're talking
10 about the Unit 13 community harvest permits on page 2?

11 MR. SPRAKER: Well --

12 MR. BRADLEY: No.

13 MR. SPRAKER: -- actually Unit 11 on page 1, there's
14 a community harvest request for a number of permits there.

15 MS. SCHWANKE: Thank you.

16 MR. SPRAKER: And there's one on page 2 for 13,
17 there's one on page 2 for 12, and there's one on page 3 for
18 20.

19 MS. SCHWANKE: Okay. Thank you.

20 MR. SPRAKER: A portion of 20A. Four places.

21 CHAIRPERSON JUDKINS: Any objection to the
22 amendment?

23 MR. BELL: Mr. Chairman?

24 CHAIRPERSON JUDKINS: Yes?

25 MR. BELL: Okay, now the amendment is 100 for what?



1 All of them or just --

2 CHAIRPERSON JUDKINS: All of them.

3 MR. BELL: So how are we going to divvy them up
4 among --

5 CHAIRPERSON JUDKINS: That's his job.

6 MR. BELL: We're going to let -- we'll let him do
7 it.

8 MR. SPRAKER: We're not. We going to let --

9 MR. BELL: Okay. I guess my question is then how do
10 we put it in this --

11 CHAIRPERSON JUDKINS: Just by their descriptions
12 (simultaneous speech) --

13 MR. BELL: Just have to rewrite it?

14 CHAIRPERSON JUDKINS: He's got certain areas for
15 management reasons he wants to harvest animals.

16 MR. BELL: No, I'm just talking functionally here.
17 So we're saying it's a hundred moose for the community harvest
18 for 11, 12, and 13, and we're leaving it to the department to
19 determine how many of those hundred go into each one of those
20 units.

21 MR. SPRAKER: And 20.

22 MR. BELL: And 20.

23 CHAIRPERSON JUDKINS: Into each area of those units.

24 MR. BELL: Okay. I just wanted to make sure we're
25 on the same page here.



1 CHAIRPERSON JUDKINS: Did you have a comment to
2 make?

3 MR. TOBEY: Mr. Chair?

4 CHAIRPERSON JUDKINS: Yes.

5 MR. TOBEY: When it comes to the any bull, it's my
6 understanding that the department will determine where those
7 any bulls come from, and that will include setting up a quota
8 between the various units that you've mentioned, but even
9 setting up a harvest quota in Unit 13 itself to ensure that
10 the any bulls are distributed in a manner that won't over-
11 harvest certain areas.

12 CHAIRPERSON JUDKINS: That's my understanding.

13 UNIDENTIFIED SPEAKER: And mine as well.

14 CHAIRPERSON JUDKINS: Kevin, go ahead.

15 MR. SAXBY: This may answer where -- what Board
16 Member Bell is inquiring about. It will look like the caribou
17 regulations, something like the caribou regulations for the
18 Forty Mile caribou herd or some of the other herds where it
19 will say that in combination with other areas, the total
20 amount is up to 100.

21 MR. BELL: Okay.

22 CHAIRPERSON JUDKINS: And I imagine that staff will
23 get with the hunt administrator and lay out where these
24 animals come from.

25 Hearing no objection, 100 is the number.



Proposal #90 - AOC recommendation is to amend and adopt.

Amendment - Repeal 5 AAC 92.074(D)(1) - (13) Gulkana, Cantwell, Chistochina, Gakona, Mentasta, Tazlina, Chitina, Kluk Kaah Community Harvest Area for moose and caribou.

The Board of Game (BOG) created Gulkana, Cantwell, Chistochina, Gakona, Mentasta, Tazlina, Chitina, Kluk Kaah Community Harvest Area has been a failed attempt at avoiding implementation of state subsistence hunts for moose and caribou in GMU 13 and parts of GMU 11 and 12 under 5 AAC 92.071 for Tier I hunts and 5 AAC 92.070 for Tier II hunts. Returning to the statutorily created subsistence laws, AS 16.05.258 for allocating harvestable moose and caribou in GMU 13, 11 and 12 will be more consistent with state law and the provisions of the Alaska State Constitution Article 8, Section 3.

In 2009 the Board of Game adopted a racially based Community Harvest Area that was consistent with findings adopted by the board in 2006, 2006-170-BOG for moose and caribou hunting by Ahtna community-based traditional hunters in under AS 16.05.330(c). AS 16.05.330(c) allows the boards to issue community subsistence permits whenever the reduction of nonsubsistence users is necessary. That was not the case in GMU 13 when the board adopted the Community Subsistence Hunt, it was competition with other state qualified subsistence users that was Athna's conflict.

The communal pattern of subsistence harvest legitimize by the Board the Game findings in 2006-170-BOG and 2011-184-BOG for GMU 13, 11, and 12 for moose and caribou can be met today from the abundant harvestable surplus available. The taking of game by proxy, 5 AAC 92.011 allows the opportunity for those with physical limitations to have others hunt moose and caribou in GMU 13, and there is no limitation on who accompanies other traditional hunters in the field.

5 AAC 99.025(c)(1) makes it clear that the members of the boards determine that the total amount of animals from the populations of moose or caribou must be available for hunting under BOTH state and federal hunting regulations based on harvest reports and population estimates. At this time in the cycle of game populations in the Gulkana, Cantwell, Chistochina, Gakona, Mentasta, Tazlina, Chitina, Kluk Kaah Community Harvest Area there is adequate harvestable surplus of moose and caribou for the board to determine that amount of game can reasonably meet subsistence users opportunities as defined in 5 AAC 99.025(c)(2).

Absolutely no one is pleased with the way the Community Subsistence Hunt (CSH) is being implemented in GMU 13, parts of 11 and 12. Ahtna people have been misled into believing the BOG can allocate 100 anybull moose to their tribal members, that has caused years of divisiveness and expense to many Alaskan hunters. AOC recommends repealing the regulations.



Submitted By
Garrett Baker
Submitted On
2/22/2017 9:42:28 AM
Affiliation

I am opposed to proposal 1. This is agenda driven to give advantage to the Ahna shareholders over the average hunter. The group already has in excess of 1 million acres that the public cannot hunt so there is no need to manipulate the rules because they want it easier.

I support proposition 2-17. There should be no moose hunts other than drawing and harvest tickets. This is a road accessible area and giving preference to native and rural subsistence causes friction with every other resident not given preference.



Submitted By
Stephen Bartelli
Submitted On
2/21/2017 10:49:01 AM
Affiliation

I would respectfully submit that the requirement to hunt moose in unit 13 when you hunt Tier 1 Nelchina caribou be removed and replaced by a system that is used in unit 20E for the Forty-mile caribou herd and moose populations. An example can be seen in the regulations for 20E (remainder) moose regarding RM 865 and RC 860. This system that allows hunting for either species, but not symotaneously, would prevent incidental take of the another species and would most likely result in less hunters concentrating efforts on moose due to the obligation to do so while using the Nelchina caribou Tier 1 permit. This would relieve some pressure on the unit 13 moose population which is a win, win situation for all involved, including the eight Ahтна communities currently greiving their supposed loss of subsistence opportunity. In addition, propositions 14 and 33 are both exceptable solutions for improvement.

Regards,

Stephen Bartelli



Submitted By
Jesse Biddle
Submitted On
2/24/2017 2:20:35 PM
Affiliation

I disagree with Proposal 42 for many reasons. Proposal 42 suggests that there should be no caribou hunting for DC485 permit hunters after September 20. This would eliminate many hunting opportunities for many hunters that may not have had the chance to hunt that early in the season. My family is very big into hockey and we are very busy in early September. We rarely go hunting before that date and it would make it hard to balance hockey and hunting in that pivotal time. I believe that this is valid complaint about the safety of our hunters here in Alaska but is not enough to validate taking out an entire section of the caribou season just seems over kill. Also, hunting in the winter months allows for more chances to snowmachine which is a good way to get the entire family out and into the great outdoors around our beautiful area. I ask you to please consider this Proposal unnecessary and please do not consider putting it into action. Thank you